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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. OLIVIA CONSUELA ST. JOHN, Defendant and Appellant.	B207082 (Los Angeles County Super. Ct. No. BA329417)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Affirmed.

Sara H. Ruddy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Olivia Consuela St. John[1] appeals from the judgment entered following his guilty plea to possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a).) He was sentenced to prison for three years and contends he never knowingly waived his right to a probation revocation hearing and the matter must be remanded to the trial court for a hearing. He also claims he did not knowingly forego his right to have the trial court consider sentencing options other than the high term. For reasons stated in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

According to the probation report, on September 23, 2007, police officers on patrol observed appellant standing in the area of Agatha Street and Stanford Avenue. While speaking with appellant, the officers observed a two-inch cylindrical glass pipe in his hand. When asked to open his hand, appellant dropped the glass pipe and an off-white rock like substance resembling rock cocaine on the ground. The officers recovered both items and arrested appellant. The substance was tested and found to be 0.10 grams of cocaine base.

On October 2, 2007, appellant was present in court with multiple defendants and pled guilty to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) with the understanding the matter was to be handled pursuant to the terms of Proposition 36. (Pen. Code, § 1210 et seq.) The court explained the consequences of the other defendants' pleas, stating that what it was "about to say won't apply to those of you getting Prop[osition] 36 and [Deferred Entry of Judgment] as long as you complete your programs." Appellant was ordered to appear in court at a later date and probation in cases GA056327 and GA067713 was revoked and reinstated.

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[1] Although referred to as a female in the opening brief, appellant is also known as Marvin Hunter and is listed in the probation report as a male. Because appellant is identified as Mr. Olivia C. St. John in pro. per. filings in the court below, the male pronoun will be used in this opinion when referring to appellant.

On October 10, 2007, appellant appeared in court and the deputy public defender advised that appellant had been determined not to be eligible for Proposition 36. The matter was transferred to Department 50 for further proceedings.

On October 12, 2007, appellant appeared in court with other defendants who were pleading guilty in their respective cases. The court advised these defendants of the rights they were waiving and the consequences of their pleas and then took their pleas. When the court addressed appellant, the court did not take his plea, stating it previously had taken appellant's plea and that the matter was in court as "a Prop. 36 kick-back." Appellant then admitted a prior strike and stated he waived "[his] rights under *Cunningham* so if [he] walk[s] away from the program, [the court] can give [him] high term in prison." The court advised appellant he had a right to be sentenced within 28 days, and appellant waived time and asked that the matter be continued for a year to October 15, 2008. The court ordered appellant released on a "conditional release to a representative from M & L Assessment Specialist for one year residential drug program."

On January 7, 2008, the court received notice from M & L Assessment Specialist that as of December 31, 2007, appellant was no longer residing at the residential treatment facility. The abandoned treatment notification received by the court indicated that appellant had "walk[ed] away" from the facility.

On January 11, 2008, the court revoked the conditional release. Probation was revoked on four earlier cases in which appellant had been placed on probation and a bench warrant for his appearance was issued.

On February 26, 2008, appellant appeared in court. Probation was denied and he was sentenced to prison for the high term of three years. Appellant addressed the court, stating he was in the hospital when he was supposed to go to the drug program. The court responded, "we checked with the program. They said you walked away." Appellant claimed he "was in Huntington House." He stated, "Mr. Mendoza never took me there. Seriously. Call somebody." When the court stated it had talked to Mr. Mendoza, appellant responded, "He did not take me."

On April 3, 2008, appellant filed a request for a rehearing of the alleged probation violation and for stay of execution pending appeal. He asserted he "was violated because of falsified allegations of (Michael Mendoza) . . . ."

On April 24, 2008, the trial court denied appellant's request for rehearing and stay of execution, stating: "1. Defendant entered into a negotiated disposition with the court on 10-12-07. As part of the disposition, the defendant was conditionally released to residential treatment program for a period of 1 year. The defendant agreed to enroll and complete a one (1) year residential drug treatment program and return with proof of completion on the date of 10-15-08. Defendant was further advised that failing to complete the program, walking away from the program, sustaining any new arrests/convictions would result in a State Prison sentence up to and including the high term. Defendant agreed to this disposition. [¶] 2. The court received reliable information that on 12-31-07 the defendant walked away from the residential program and a bench warrant was issued on 01-11-08. [¶] 3. On 01-11-08 the defendant sustained a new arrest in Pasadena under Case Number 8PS00843-01 under the name of Marvin Hunter. [¶] 4. On 02-16-08 the defendant was present in custody on the bench warrant and was sentenced to the upper term of 3 years state prison. [¶] 5. On the same date of sentencing to prison, the court revoked and terminated probation cases in the following case numbers: GA059005-01, GA056327-01, GA067713 and 5 PA04383-01.[2] No additional time was given on those cases. [¶] Defendant's request for stay of execution pending appeal is denied. [¶] Defendant contends that he has a certificate of program completion in his possession. The court does not disbelieve the defendant of obtaining a certificate of completion from a program, but finds it improbable that the

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[2] These cases are not the subject of this appeal.

certificate is for a 1 year residential treatment program."[3]

DISCUSSION

I

Appellant first claims he never knowingly waived his right to a probation revocation hearing. Appellant reads the record as indicating that, on October 12, the court placed him on probation on the condition that he participate in a one-year drug treatment program. We disagree. The record reflects that rather than being placed on probation, appellant waived time for sentencing and was conditionally released to a one-year residential drug program. Although the transcript of the October 12, 2007 proceeding reflects that the court stated "unless you are going to prison, you will be placed on three years probation with conditions," the transcript also reflects the court was not addressing appellant. According to the record before us, appellant was not sentenced until February 26, 2008, after he had violated the terms of his agreement that he would enroll in and complete a one-year residential drug treatment program and return with proof of completion on October 15, 2008. Contrary to appellant's assertion, there is no discrepancy between the transcript of the oral proceedings and the clerk's transcript. (Cf. *People v. Mitchell* (2001) 26 Cal.4th 181, 185-186.)

II

Appellant additionally claims he did not knowingly forego his right to have the trial court consider sentencing options other than the high term. In addition to appellant having agreed that he could be sentenced to the upper term, he also has waived any claim relative to the court's failure to give a statement of reasons for its sentence. (See *People v. Davis* (1995) 10 Cal.4th 463, 551-552; *People v. Scott* (1994) 9 Cal.4th 331, 353.)

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[3] Appellant filed an appeal from the denial of his motion for rehearing and reconsideration (B208838) and by order dated August 15, 2008, case numbers B207082 and B208838 were ordered consolidated. All documents previously filed in case number B208838 were ordered refiled in case number B207082 and all future filings were ordered to be made in case number B207082.

DISPOSITION

The order is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.